

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRIAN ROBINSON, Derivatively on Behalf of
OCULAR THERAPEUTIX, INC.

Plaintiff,

v.

AMARPREET SAWHNEY, CHARLES WARDEN,
RICHARD L. LINDSTROM, JASWINDER
CHADHA, BRUCE A. PEACOCK, JEFFREY S.
HEIER, W. JAMES O'SHEA, ERIC ANKERUD,
JAMES GARVEY, GEORGE MIGAUSKY,
and W. BRADFORD SMITH

Defendants,

-and-

OCULAR THERAPEUTIX, INC., a Delaware
corporation,

Nominal Defendant.

Case No. 1:18-cv-10199-GAO

**ORAL ARGUMENT
REQUESTED**

DEFENDANTS' MOTION TO DISMISS OR STAY THE DERIVATIVE COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and the Court's authority to decline to exercise jurisdiction over federal litigation when parallel, earlier-filed litigation is proceeding in state court, defendants hereby move to dismiss or stay plaintiff's stockholder derivative complaint (the "Complaint").

The grounds for this motion, which are explained in detail in the accompanying Memorandum of Law and the Declaration of Peter J. Kolovos, filed contemporaneously, include the following:

1. Plaintiff's Complaint is duplicative of earlier-filed and now-consolidated derivative cases that the defendants are litigating actively in the Business Litigation Session of the Suffolk County Superior Court. *In re Ocular Therapeutix, Inc. Deriv. Litig.*, Civ. Action No. 17-3425 BLS (Mass. Sup. Ct. Suffolk Cnty.) (the "Superior Court Action"). Therefore, the Court should dismiss or stay plaintiff's Complaint under the prior pending action doctrine.

2. Plaintiff's case is also parallel to the Superior Court Action and the balance of factors from *Colorado River* favors abstention; thus, the Court should dismiss or stay plaintiff's Complaint based on the *Colorado River* abstention doctrine. *See Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

WHEREFORE, for these reasons and the reasons set forth in the accompanying Memorandum of Law and contemporaneously-filed Declaration, the defendants respectfully request that the Court:

1. Enter an order dismissing or staying all claims against the defendants;
2. Award the defendants their reasonable attorneys' fees and expenses; and
3. Award any other relief that is fair and just.

REQUEST FOR ORAL ARGUMENT

The defendants respectfully request an oral argument pursuant to Local Rule 7.1(d). The defendants make this request because they believe that oral argument may assist the Court's consideration of this Motion and they would appreciate the opportunity for counsel to address any issues raised by, or questions posed by, the Court.

Respectfully Submitted,

Dated: April 30, 2018

/s/ Peter J. Kolovos

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Heier, W. James O'Shea, Erik Ankerud, James

Garvey, George Migausky, and W. Bradford Smith

LOCAL RULE 7.1(A)(2) CERTIFICATE

I hereby certify that I have conferred with counsel for the plaintiff, who did not assent to the relief sought in this Motion.

/s/ Peter J. Kolovos
Peter J. Kolovos

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the participants of the ECF system in the above-captioned matter on April 30, 2018.

Dated: April 30, 2018

/s/ Peter J. Kolovos
Peter J. Kolovos